

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

LUVEN WHITEHORSE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM DECISION AND
ORDER DENYING PETITIONER'S
MOTION FOR CERTIFICATE OF
APPEALABILITY AND GRANTING
PETITIONER'S MOTION FOR
LEAVE TO APPEAL *IN FORMA
PAUPERIS*

Case No. 2:09-CV-273 TS

This matter is before the Court on Petitioner's Motion for Certificate of Appealability and Petitioner's Motion for Leave to Appeal *in forma pauperis*.

An appeal from a final order in a proceeding under 28 U.S.C. § 2255 may not be taken unless a judge or circuit justice issues a certificate of appealability.¹ A COA may issue only "if the applicant has made a substantial showing of the denial of a constitutional right."² "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the

¹28 U.S.C. § 2253(c)(1).

²*Id.* § 2253(c)(2).

district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further."³ For substantially the same reasons set out in the Court's prior Orders,⁴ the Court will deny Petitioner's Motion for Certificate of Appealability. However, the Court will allow Petitioner to proceed *in forma pauperis*.

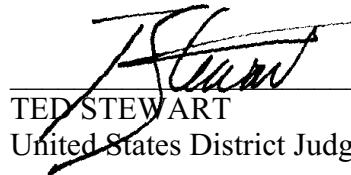
It is therefore

ORDERED that Petitioner's Motion for Certificate of Appealability (Docket No. 10) is DENIED. It is further

ORDERED that Petitioner's Motion for Leave to Appeal *in forma pauperis* is GRANTED.

DATED August 28, 2009.

BY THE COURT:



TED STEWART
United States District Judge

³*Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

⁴Docket Nos. 3 and 5.